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October 4, 2021

Thomas R. Mooney, AICP  
Planning Director  
City of Miami Beach  
1700 Convention Center Drive, 2<sup>nd</sup> Floor  
Miami Beach, FL 33139

**RE: PB21-0466 – Letter of Intent for Modification to Conditional Use Permit File No. 2133 (“CUP”) for Property Located at 2912 Collins Avenue (“Property”)**

Dear Tom:

This firm represents Odyssey PropCo VIII, LLC (the “Applicant” or “Odyssey”) with regard to the Property. The Applicant recently acquired the Property on July 23, 2021. See Special Warranty Deed attached hereto at **Exhibit “A”**. Please accept this letter of intent and enclosed application materials in connection with the Applicant’s request for a modification to the CUP to change the name of the owner/operator from 2912 Collins Avenue, LLC to Odyssey pursuant to Condition 1 of the CUP and in accordance with Section 118, Article IV of the Code of Ordinances (the “Code”).

By way of background, the Property is currently developed with 7-story, 150-room hotel with ground level commercial uses and a mechanical parking lift system. The hotel operates under the AC Hotel by Marriott flag. The sole reason for the CUP was for the use of a mechanical parking system in accordance with the requirements of the Code. A copy of the CUP is attached hereto as **Exhibit “B”**. Additionally, however, there are operational conditions in the CUP. The Applicant is not seeking to modify the operational conditions or any other provision of the CUP with the exception of the owner/operator information as stated above. All provisions of the CUP, including the operational plan and hotel layout, shall remain in effect.

In terms of the new owner, Odyssey is an affiliate of TPG Hotels, Resorts and Marinas, one of the nation’s premier hotel management companies. Currently, TPG manages in excess of 170 hotels, 30,000 guest rooms in 32 states. Odyssey is TPG’s affiliate that focuses on hotel acquisitions. The Property will continue to be operated by Marriot as an AC Hotel by Marriot.

Thomas R. Mooney, AICP  
October 4, 2021  
Page 2

We respectfully request your positive recommendation of approval of the Applicant's request. If you have any questions or comments, please do not hesitate to contact us.

Sincerely,

Shutts & Bowen LLP



David J. Coviello

DJC:sm

# **EXHIBIT “A”**

This Instrument Was Prepared By:  
Robert I. Weissler, Esq.  
Stearns Weaver Miller Weissler Alhadeff  
& Sitterson, P.A.  
150 West Flagler Street, Suite 2200  
Miami, FL 33130

Record and Return To:  
Andrew Small, Esq.  
Kirkland & Ellis LLP  
300 North LaSalle  
Chicago, IL 60611

Property Appraiser  
Identification No. 02-3226-001-1090

(Reserved)

**SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED made this 23rd day of July, 2021 between 2912 COLLINS AVENUE, LLC, a Delaware limited liability company (the "Grantor"), whose mailing address is 2999 NE 191 Street, Suite 800, Aventura, FL 33180, and ODYSSEY PROPCO VIII, LLC, a Delaware limited liability company (the "Grantee"), whose mailing address is 345 California Street, Suite 3300, San Francisco, CA 94104.

**W I T N E S S E T H:**

That Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, to it in hand paid by Grantee, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto Grantee and Grantee's successors and assigns, the real property together with all improvements located thereon, and any and all fixtures attached to or incorporated within such improvements (collectively, the "Property") located in Miami-Dade County, Florida, and more particularly described in Exhibit "A" attached hereto and made a part hereof.

TOGETHER with all the rights, privileges, tenements, hereditaments, easements and appurtenances belonging or in any way appertaining to the Property.

TO HAVE AND TO HOLD the same in fee simple forever.

This conveyance is made and accepted subject and subordinate to (a) taxes and assessments by any taxing authority for the current year, and subsequent years, (b) zoning laws and regulations and ordinances of municipal and other governmental authorities affecting the Property, (c) all matters of record (including that Amended and Restated Mortgage in favor of American National Insurance Company, a Texas insurance company) affecting the Property without hereby reimposing same, and (d) matters that would appear on a current and accurate survey of the

Property (all of those items described in (a) through (d) above are hereinafter collectively referred to as the “**Permitted Encumbrances**”).

AND GRANTOR hereby covenants with Grantee that Grantor is lawfully seized of the Property in fee simple; that Grantor has good right and lawful authority to sell and convey the Property; and that Grantor does hereby fully warrant the title to the Property, though subject to the Permitted Encumbrances, and will defend the same against the lawful claims of all persons claiming by, through or under Grantor, but against none other.


IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed by its duly authorized representative on the day and year first above written.

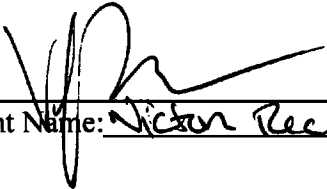
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed by its duly authorized representative on the day and year first above written.

Witnesses:

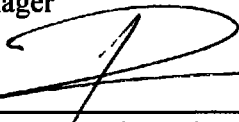
  
\_\_\_\_\_  
Print Name: Laura Recardo

  
\_\_\_\_\_  
Print Name: Victor Recardo

**2912 COLLINS AVENUE, LLC, a Delaware limited liability company**

By: 2912 Collins Avenue Holdings, LLC, a Delaware limited liability company, its sole member

By: RIF 2912 Manager, LLC, a Delaware limited liability company, its manager

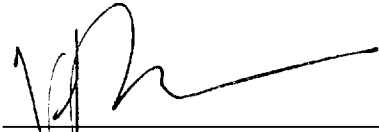
  
By: \_\_\_\_\_  
Name: Robert Finvarb  
Title: Manager


**ACKNOWLEDGMENT**

STATE OF FLORIDA                     )  
  ) SS:  
COUNTY OF MIAMI-DADE         )

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this day of July 19, 2021 by Robert Finvarb, as Manager of RIF 2912 Manager, LLC, a Delaware limited liability company, the manager of 2912 Collins Avenue Holdings, LLC, a Delaware limited liability company, the sole member of 2912 COLLINS AVENUE, LLC, a Delaware limited liability company, on behalf of the company, who is personally known to me or has produced \_\_\_\_\_ as identification.

My Commission Expires:

  
\_\_\_\_\_  
Notary Public, State of Florida  
Print Name: \_\_\_\_\_  
Commission No. \_\_\_\_\_

 VICTOR ALEXIS RECONDO  
Commission # HH 024923  
Expires November 19, 2024  
Bonded Thru Budget Notary Services

**EXHIBIT A**

The land referred to herein below is situated in the County of MIAMI-DADE, State of Florida, and described as follows:

Lots 1, 2, 6, 9 and 10, Block 12, of AMENDED MAP OF THE OCEAN FRONT PROPERTY OF MIAMI BEACH IMPROVEMENT COMPANY, according to the Plat thereof, as recorded in Plat Book 5, Page 7, of the Public Records of Miami-Dade County, Florida.



# **EXHIBIT “B”**



CFN 2013R0966114  
DR Bk 28944 Pgs 2294 - 2300; (7pgs)  
RECORDED 12/10/2013 11:21:15  
HARVEY RUVIN, CLERK OF COURT  
MIAMI-DADE COUNTY, FLORIDA

**PLANNING BOARD  
CITY OF MIAMI BEACH, FLORIDA**

**PROPERTY:** 2912 Collins Avenue, 211 29<sup>th</sup> Street and 231 29<sup>th</sup> Street

**FILE NO.** 2133

**IN RE:** The application by 2912 Collins Avenue, LLC., requesting Conditional Use approval, pursuant to Chapter 118, Article IV, Chapter 130, Article II, and Chapter 142, Article IV, to build a 7-story, 150-room hotel with ground level commercial uses, and a mechanical parking lift system.

**LEGAL DESCRIPTION:** Lots 1, 2, 6, 9, and 10 Block 12 Ocean Front Property of the Miami Beach Improvement Company, according to the Plat thereof, recorded in Plat Book 5 Pages 7 and 8 of the Public Records of Miami-Dade County Florida.

**MEETING DATE:** September 24, 2013

**CORRECTED CONDITIONAL USE PERMIT**

The applicant, 2912 Collins Avenue, LLC, filed an application with the Planning Director requesting Conditional Use approval pursuant to Chapter 118, Article IV, Chapter 130, Article II, and Chapter 142, Article IV, of the Miami Beach City Code, to build a 7-story, 150-room hotel with ground level commercial uses, and a mechanical parking lift system.

The Planning Board of the City of Miami Beach makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the of the record for this matter:

That the property in question is located in the RM-2, Residential Multifamily Medium Intensity Zoning District;

That the use is consistent with the Comprehensive Plan for the area in which the property is located;

That the intended use or construction will not result in an impact that will exceed the thresholds for the levels of service as set forth in the Comprehensive Plan;

That structures and uses associated with the request are consistent with the Land Development Regulations;

That the public health, safety, morals, and general welfare will not be adversely affected;

That necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.

**IT IS THEREFORE ORDERED**, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which is adopted herein, including staff recommendations, as modified by the Planning Board, that a Conditional Use Permit as requested and set forth above, be GRANTED subject to the following conditions to which the applicant has agreed:

1. This Conditional Use Permit is issued to 2912 Collins Avenue, LLC, as owner of the property. Any change of operator or 50% (fifty percent) or more stock ownership shall require review and approval by the Planning Board as a modification to this Conditional Use Permit. Subsequent owners and operators shall be required to appear before the Board to affirm their understanding of the conditions listed herein.
2. The owner of the property at 2901 Collins Avenue shall file an application to modify Condition No. 12 of the previously issued CUP for PB File 2013, in sufficient time to be heard at the November 19, 2013 meeting, in order to clarify the location and type of the required parking. A denial of such application shall require the applicant to return to the Board for reconsideration of this Conditional Use Permit.
3. The existing Conditional Use Permit for surface parking on the subject property, PB File 2055, shall expire either upon the issuance of a Certificate of Occupancy for this approved project, or in April 2014, whichever comes first.
4. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for the parking and drop-off portions of project, in a manner to be reviewed and approved by staff consistent with the instructions from the Planning Board and the Conditional Use criteria. At a minimum, such operational plan and narrative shall include the following:
  - a. The garage shall be in operation 24 hours per day, seven days a week, as proposed by the applicant. There shall be security personnel of at least one person on-site monitoring the garage operation 24 hours a day, seven days a week.
  - b. The structure, operation, procedures, maintenance, service response procedures, remote technical service team, local, on-site service team, and spare parts inventory shall be in accordance with manufacturer's specifications, and as detailed in the operations plan, as proposed by the applicant.
  - c. The mechanical lifts shall be maintained in accordance with the manufacturer's requirements. A designated person will be on the property to monitor the operation of the mechanical lifts.
  - d. An emergency procedure that includes a quick-response service contract with the mechanical lifts and manual operations service provider.
  - e. Generators shall be provided to assist with the operation of the mechanical lifts in the event of a power outage.
  - f. Repair personnel for the mechanical lifts shall be on call 24 hours per day seven days per week.

- g. Warning signs prohibiting horn honking or car alarm sounding shall be posted prominently by the applicant or valet operator, and valet attendants shall be instructed to observe them strictly.
  - h. Valet storage of vehicles in the above ground portions of the mechanical parking garage shall be exclusively for the hotel at 2912 Collins Avenue and its accessory uses. The basement level of the mechanical parking garage shall be for the exclusive valet parking use of 2901 Collins Avenue.
  - i. A delivery and refuse plan, including all delivery access points and routes, as well as the location of all trash and refuse areas, shall be provided in a manner to be reviewed and approved by staff.
  - j. All valet drop-off and pick-up for the uses at 2912 Collins Avenue shall occur within the garage structure, as depicted in the submitted plans as proposed by the applicant.
  - k. The number of valet attendants may vary from 2 to 4 depending on demand, as determined by the valet operator.
5. As part of the Building Permit plans for the project, the applicant shall submit revised architectural drawings, in a manner to be reviewed and approved by staff consistent with the instructions from the Planning Board and the Conditional Use criteria; at a minimum, such plans shall satisfy the following:
- a. The final details and plans for the proposed mechanical parking system shall be made part of the building permit plans for the project. Such plans shall comply with all applicable regulations and requirements of the City Code.
  - b. The applicant shall install any sound attenuating fixtures and/or devices that may be required, throughout the building and property, in order to minimize any spillover of sound to adjacent properties, which may be generated by the mechanical parking system, in a manner consistent with the requirements of the City Code and in a manner to be reviewed and approved by staff.
6. Prior to the issuance of a building permit for the project, the applicant shall submit an operational plan and narrative for all portions of the project, in a manner to be reviewed and approved by staff, consistent with the instructions from the Planning Board and the Conditional Use criteria. At a minimum, such operational plan and narrative shall satisfy the following:
- a. Hours of delivery shall be between 8:00 AM and 11:00 AM Monday through Friday. No deliveries shall take place on Saturdays or Sundays, as proposed by the Applicant.
  - b. Hours of trash pick-up shall be between 8:00 AM and 11:00 AM 7 days a week, as proposed by the Applicant.
  - c. All trash containers shall utilize rubber wheels, as well as a path consisting of a surface finish that reduces noise.

- d. The trash room shall be air conditioned and sound-proofed. The doors to the trash room shall remain closed and secured when not in use and all trash dumpsters shall be closed at all times except when in active use.
- e. All check-in and check-out shall occur at the main lobby, on the ground floor of the hotel on 29<sup>th</sup> Street.
- f. The applicant shall not seek an entertainment or dance hall license for any of the venues on the property, as proffered by the applicant.
- g. No accessory use shall have music, whether live, recorded, amplified or non-amplified, which is played at a volume louder than ambient background music (defined as a sound level that does not interfere with normal conversation), as proposed by the applicant.
- h. Except as may be required for fire or building code/Life Safety Code purposes, no loudspeakers shall be affixed to or otherwise located on the exterior of the premises.
- i. No patrons shall be allowed to queue on public rights-of-way.
- j. No ground floor accessory use shall operate between 2:00 A.M. and 6:00 A.M. 7 days per week. This shall not apply to room service.
- k. The third floor patio and rooftop pool deck shall be for the use of registered hotel guests and their invitees, exclusively.
- l. All food served on the third floor patio and rooftop deck shall be prepared in the hotel's restaurant located on the third floor. All patron use of the outdoor area of the third floor patio and/or rooftop pool deck shall cease at 8:00 P.M., seven days a week, and staff clean up shall cease one hour past this time. Any rooftop pool or spa shall be closed from 2:00 AM to 8:00 AM.
- m. Applicant agrees to install sound attenuating design elements throughout the property in order to minimize any spillover of sound to adjacent properties, in a manner consistent with the limits and requirements of the City Code.
- n. Small distributed speakers, shall be permitted to be mounted on the ground or placed within the landscaped areas but only for ambient, background music, which does not interfere with normal conversation and will be shut down nightly by 8:00 P.M. Entertainment, including live music, shall be permitted for limited private indoor events only.
- o. No speakers, except as may be required for fire or building code/Life Safety Code purposes and those associated with the distributed sound system for the landscape areas or at floor level, may be permitted on the ground floor and rooftops.
- p. No outdoor bar counters shall be permitted on the premises.
- q. The hotel's rules and practices shall prohibit visitors, invitees and others using the facilities or otherwise on the premises, from operating audio amplification equipment, inclusive of loudspeakers, radio receivers, television sets, musical instruments, or other machines or devices for the producing or reproducing of sound, that generate noise that is plainly audible at nearby properties.

7. Pursuant to Section 130-251 of the City Code, a declaration of restrictive covenants, running with the land, and stipulating that a valet operator shall be provided for such parking for so long as the use continues, shall be provided by the applicant in a form acceptable to the City Attorney and the Planning Director, and recorded in the official records of Miami Dade County. Such covenant shall be fully executed and recorded prior to the issuance of a building permit.
8. The Planning Board shall maintain jurisdiction of this Conditional Use Permit. If deemed necessary, at the request of the Planning Director, the applicant shall provide a progress report to the Board. The Board reserves the right to modify the Conditional Use approval at the time of a progress report in a non-substantive manner, to impose additional conditions to address possible problems and to determine the timing and need for future progress reports. This Conditional Use is also subject to modification or revocation under City Code Sec. 118-194 (c).
9. The Planning Director shall retain the right to call the applicant back before the Planning Board, at the expense of the applicant, to impose and/or modify the hours of operation, and the placement or use on the property of exterior loudspeakers, fixed or portable, or amend or impose other conditions, should there be a valid violation (as determined by Code Compliance) about loud, excessive, unnecessary, or unusual noise or other conditions of this approval. An adverse adjudication of a violation against the operator is not necessary for the board to have jurisdiction over the matter under this condition. This condition vests jurisdiction independent of any other condition thereof.
10. The conditions of approval for this Conditional Use Permit are binding on the applicant, the property owners, operators, and all successors in interest and assigns. The applicant, now and in the future, shall abide by all the documents and statements submitted with this application for Conditional Use permit.
11. Any substantial modifications to the plans submitted and approved as part of the application, as determined by the Planning Director or designee, may require the applicant to return to the Board for approval of the modified plans.
12. The applicant shall address the following Concurrency and Parking requirements:
  - a. The applicant shall submit an MOT (Management of Traffic) to Public Works Department staff for review and approval prior to the issuance of a building permit. The MOT shall address any traffic flow disruption due to construction activity on the site.
  - b. Prior to the issuance of a building permit, the applicant shall participate in a Transportation Concurrency Management Area Plan (TCMA Plan), if deemed necessary, by paying its fair share cost, as may be determined as determined by the Concurrency Management Division.
  - c. A final concurrency determination shall be conducted prior to the issuance of a Building Permit. Mitigation fees and concurrency administrative costs shall be paid prior to the project receiving any Building Permit.
  - d. Prior to the issuance of a Building Permit, the calculations for required parking for the project shall be determined by the Planning Department. Such parking calculations shall be based upon both the number of hotel rooms, and the intensity

of the proposed accessory uses as measured by the number of seats in dining areas, and by the square footage of the liquor service areas not included in the areas for which seats are calculated.

- e. A final determination for the required parking shall be conducted prior to the issuance of a Certificate of Occupancy or Business Tax Receipt, whichever comes first.
- 13. The applicant shall obtain a full building permit within 18 months from the date of the meeting at which the original CUP was issued, and the work shall proceed in accordance with the Florida Building Code. Extensions of time for good cause, not to exceed a total of one year for all extensions, may be granted by the Planning Board, in accordance with the requirements and procedures in the land Development Regulations.
- 14. The applicant shall resolve all outstanding violations and fines on the property, if any, prior to the issuance of a building permit for the project.
- 15. A violation of Chapter 46, Article IV, "Noise," of the Code of the City of Miami Beach, Florida (a/k/a "noise ordinance"), as may be amended from time to time, shall be deemed a violation of this Conditional Use Permit and subject to the remedies as described in section 118-194, of the City Code.
- 16. This order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
- 17. Within a reasonable period of time after receipt of the executed Conditional Use Permit, the applicant, at its sole expense, shall record it in the Public Records of Miami-Dade County, and return the recorded instrument to the Planning Department. No building permit, certificate of occupancy, or certificate of completion shall be issued until this requirement has been satisfied.
- 18. The establishment and operation of this Conditional Use shall comply with all the aforementioned conditions of approval; non-compliance shall constitute a violation of the City Code, and shall be subject to enforcement procedures set forth in Section 114-8 of the Code and such other enforcement procedures as are permitted by law. Any failure by the applicant to comply with the conditions of this Order shall also constitute a basis for consideration by the Planning Board for a revocation of this Conditional Use.
- 19. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

Dated this 6th day of December, 2013

PLANNING BOARD OF THE  
CITY OF MIAMI BEACH, FLORIDA

BY: [Signature]  
Richard G. Lorber, AICP, LEED AP  
Acting Planning Director  
For Chairman

STATE OF FLORIDA )  
COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 6th day of December, 2013, by Richard G. Lorber, Acting Planning Director of the City of Miami Beach, Florida, a Florida Municipal Corporation, on behalf of the corporation. He is personally known to me.



[NOTARIAL SEAL]

TERESA MARIA  
MY COMMISSION # FF 042188  
EXPIRES: December 2, 2017  
Bonded Thru Budget Notary Services

[Signature]  
Notary:  
Print Name: TERESA MARIA  
Notary Public, State of Florida  
My Commission Expires: 12-2-17  
Commission Number: FF 042188

Approved As To Form:  
Legal Department (Filed 12-6-2013)

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September 24, 2013

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